

## **Lapse in Appropriations under the Antideficiency Act: Ethics Q & A's**

**Do the ethics rules apply to both excepted and non-excepted employees during a lapse in appropriations under the Antideficiency Act, more commonly referred to as a federal government shutdown ("shutdown")?** Yes. Our status as federal and Department of Justice (DOJ) employees does not change for both excepted and non-excepted employees, even though non-excepted employees are not reporting to work at their federal facilities. Therefore, all of the ethics rules continue to apply to all employees.

**Where may employees seek guidance if they have an ethics-related question?** Questions and answers to assist employees with the most common issues that may arise during a shutdown follow below.

Please note: unless included in an excepted category based on other duties, ethics officials are non-excepted; therefore, they will not be available to answer questions. If an employee is concerned that his action may violate the ethics statutes, standards of conduct, or DOJ supplemental regulations, it is best to refrain from that action until the employee may seek the necessary guidance or authorization.

### **Outside Activities/Outside Employment**

**May employees seek and accept a non-federal job during the shutdown?** It depends. See the answers to the questions below for the outside activities/outside employment that are prohibited or that require Component Head approval. However, because employees will not have access to their ethics officials or be able to obtain prior approval for the outside activity during a shutdown, they must evaluate the activity closely. If there is a risk that the outside activity/employment would not be approved, the employee should refrain from participating during the shutdown.

**What outside activities/employment are strictly prohibited?** Regardless of a government shutdown, the following outside activities are prohibited unless a waiver from the Deputy Attorney General is obtained prior to the shutdown: the paid practice of law, involvement in criminal or habeas corpus matters, and involvement in matters in which the Department is a party or represents a party.

**What outside activities/employment are permissible but only after receiving prior Component Head approval?** The uncompensated practice of law, and activities that involve a subject matter, policy or program that is in your Component's area of responsibility (e.g., working for a DOJ contractor who provides products or services to a Component) are permissible only after approval from the employee's Component Head. If there is a risk that the outside activity/employment would not be approved, the employee should refrain from participating during the shutdown.

**Must employees seek review and approval of outside activities/employment that they began during the shutdown?** Yes. Upon their return to work, employees must contact their ethics officials and seek a review and any necessary approvals for their outside activities/employment.

**What outside activities/employment are permissible without prior approval?** Generally, no prior approval is required for certain outside employment such as sales positions at a retail store or food service positions at restaurants. Positions such as these likely will not conflict with an employee's duties at DOJ.

**May employees volunteer to continue to carry out their Department duties during a shutdown?** No. Employees deemed non-excepted may not volunteer their services and continue working on Department business during a government shutdown.

**May employees participate in pro bono legal work?** No, unless it was approved prior to the shutdown. Laura Klein, Pro Bono Coordinator, provides the following guidance: "Attorneys may engage only in pro bono activity which was approved before the shutdown. Therefore, attorneys may not take on new pro bono projects during the shutdown. They cannot take a new case or work at a clinic unless they have cleared it before the shutdown. I know attorneys may want to use their free time in a positive way, but they cannot give legal advice (outside activity) without prior approval..." Email to DOJ Pro Bono Committee and Interagency Representatives concerning preparations for a possible shutdown, September 27, 2013.

**May employees volunteer for a partisan political campaign or candidate during the shutdown?** It depends. Remember under the Hatch Act (5 U.S.C. § 7321–7326), employees have different restrictions on their political activities based upon their positions at DOJ. Refer to the Office of Special Counsel's website ([www.osc.gov](http://www.osc.gov)) or the Departmental Ethics Office website (<https://www.justice.gov/jmd/ethics>), if active. If there is a risk that the contemplated activity violates the Act, employees should refrain from participating in the activity.

**May employees use their official title or position in connection with their outside activity/employment?** No. Employees must not misuse their official status in order to obtain outside employment, nor may they use their titles or positions to benefit the outside activities/employment.

### **Gifts**

**Do the gift rules apply during a shutdown?** Yes, all of the ethics rules continue to apply to federal employees during a government shutdown. The general rule concerning gifts from an outside source (versus gifts among employees) is that a federal employee may not accept a gift from a prohibited source or given because of his official position. There are a few exceptions to this rule, addressed below.

**May employees accept a discount offered by a bank or other commercial organization?**

Generally, yes, IF the discount is offered to ALL federal employees regardless of pay or agency. (For example, a local deli is offering free sandwiches to all federal government employees for the first two days of the shutdown.) Employees also may also accept a discount offered to the public. (For example, a local pizza delivery shop offers large pizzas for \$7 every Monday.) A discount offered to all federal employees or to the public is not limited to \$20 per occurrence or \$50 per year.

**May employees present their Government identification badge to receive a permissible discount offered to all federal employees?**

Yes. Employees may show their Government ID to prove they are eligible for an existing discount. REMEMBER! Employees may not use their Government ID to solicit or encourage a gift or special treatment- this is a misuse of position!

**May employees accept a gift from a prohibited source or offered because of their federal position if the gift is valued at \$20 or less?** It depends. Although the letter of the gift rules may permit receipt of this gift, the spirit of the rules requires prudence when applying them. If receipt of a gift from an outside source would raise a concern about an employee's impartiality, it would be wise not to accept it. (For example, during the shutdown, Microsoft offers an upgrade to its suite of programming products to DOJ IT technicians for their personal computers; it is valued at \$19.99. A number of DOJ IT technicians are evaluating programming needs under a pending IT contract; Microsoft is one of the bidders under the pending contract. To avoid any appearance of a conflict of interest, the IT technicians working on the pending contract should decline Microsoft's offer.)

## **Social Media**

**May employees comment/blog about the government shutdown on social media sites?**

Generally, yes, employees may comment about the shutdown in their personal capacity. However, be aware that if employees' official titles/positions are listed on the introduction page of their site, they must be careful not to make comments that would appear to be official Department statements. Also, remember that information that is not appropriate for disclosure by employees in work status continues to be inappropriate for disclosure when employees are in shutdown status.

**May employees continue to conduct Department business during a shutdown using their personal email or social media sites?**

No, employees may not continue to work using their personal email or social media sites. This equates to employees volunteering their services to DOJ during the shutdown, which is prohibited. However, supervisors may use personal email addresses to send notices, particularly return-to-work notices.